THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20187 of 1997

Dated: 29.06.2006

Between
Sudharshan Rao Patki
and others.

…..Petitioners

and

1.The Deputy Registrar of Cooperative
Societies, Nizamabad and others.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20187 of 1997

ORDER:

This writ petition is filed seeking Certiorari to call for the records relating to file No.824/93-F, dated 11.01.1994 on the file of the 1st respondent under Section 71 (2) of the A.P. Co-operative Societies Act, 1964 and consequential proceedings bearing RC.No.824/93-F, dated 8.2.1994 for recovery of an amount of Rs.12,690.88 ps along with interest from 1.9.1993 as confirmed in the appeal in CTA No.32 of 1994 dated 3.2.1997 and declare them as arbitrary and illegal.

It is the case of the petitioners that their father obtained housing loan of Rs.14,500/- in the year 1963 from the Peoples Co-operative Housing Society Limited, Nizamabad, 2nd respondent herein, for construction of a house under Middle Income Group Housing Scheme and discharged the same. Thereafter, their father had entered into an agreement with the 2nd respondent-society on 27.3.1963. The loan amount has also been paid after the society satisfied the progress of the construction work as per the covenants of the agreement. As per clause 14 of the agreement, their father has to pay the amount in instalments on or before 10th of every succeeding month to the Society and the instalments shall become payable from the 4th month last instalment of the loan received by the member. Their father has

received the loan instalment on 29.3.1966. Hence, the loan amount shall be payable from the month of July, 1966. 1st respondent has issued notices on 18.5.1993 and 25.11.1993 directing their father to pay the loan amount. Pursuant to the said notices, their father appeared before the 1st respondent on 22.7.1993 and the 1st respondent has recorded the statement of their father. In the statement, their father stated that he has repaid the entire loan amount to the 2nd respondent as per Clause-4 of the agreement dated 27.3.1963 and he has also obtained 'No Due Certificate' from the 2nd respondent on 10.1.1983. In spite of this, the 1st respondent has initiated the proceedings under Section 71 (1) of the A.P. Co-operative Societies Act, 1964 for issuing a certificate for recovery of the so called dues and issued a certificate through proceedings dated 11.1.1994 for recovery of Rs.12,690-88ps.

According to the petitioners, their father had taken a loan of Rs.14,500/- and he has repaid the amount of Rs.21,906.51ps including the interest accrued thereon on 10.1.1983. Further, the 1st respondent issued the recovery certificate under Section 71 (2) of the A.P. Co-operative Societies Act, 1964 dated 11.4.1994 without considering their father's representation as well as the statement made before him. Aggrieved thereby, their father has preferred an appeal No.CTA.No.32 of 1994 before the 3rd respondent-Co-operative Tribunal. After a detailed consideration of the matter, the Tribunal dismissed the appeal observing as under:

> "It is a fact that loan was not sanctioned to him by the society but by the Government of A,.P through the society

as per the conditions stipulated in the G.O.Ms.No.2535/59, dated 20.10.1959 and also as per the terms of agreement entered into by him. Therefore, no due certificate cannot be issued by the society unless clearance is obtained from the Government Department concerned."

Aggrieved by the same, the present writ petiton has been preferred.

Heard the learned counsel on either side.

It is an admitted fact that the agreement dated 27.3.1963 was entered into between the 2nd respondent and the father of the petitioners. In this regard, for the purpose of resolving the dispute, it may be necessary to notice the following clauses.

2. That in consideration of the above the society hereby agrees to advance a loan of Rs.14,500/- (in words) Rupees fourteen thousand five hundred only) to the member for the construction of a house on the said plot, in the following instalments;

i) 20% of the said loan on mortgaging plot of land and after execution of this agreement;

ii) 35% of the said loan, when it shall be proved to the satisfaction of the Society that the amount of the first instalment of the loan was spent by the member for the construction of the house only and upto plinth level.

iii) 35% of the said loan, when it shall be proved to the satisfaction of the Society that the amount of the second installment of the loan was spent by the member for the construction of the house only (when the construction has reached roof level).

iv) 10% of the said loan on completion of the house fit for occupations (to the satisfaction of the society).

15) That the member hereby convenants and declares that he shall abide by the bye-laws, rules and regulations of the Society with all their modifications and alterations from time to time and also the terms and conditions laid down by Government in advancing the loan to the Society.

16) That if the member commits breach of any of the terms of this deed, or defaults in making payment of the instalments due, the Society may as its option demand the whole amount due and recover the amount along with interest by the sale of the land and the house constructed thereon and also from the person and other property of the member as provided in the Hyderabad Co-operative Societies Act No.16 of 1952 and rules thereunder or any other law modifying or amending the same.

17) That the member hereby agrees that the Society may assign this deed in favour of Government of AP for the loan obtained from the Government for House Building purposes under Middle Income Group Housing Scheme.

From the above, it is clear that though the Government sanctioned loans, the loans were advanced through the society to the father of the petitioners and their father was supposed to repay the same to the society and in fact, the society is conferred with power to recover the amounts as and when fell due from an individual member of the society. Further, Clause 17 speaks that the member hereby agrees that the society may assign this deed in favour of the Government of AP for the loan obtained from the Government for House Building purposes under Middle Income Group Housing Scheme.

In the impugned order as confirmed by the Tribunal, there is no whisper as to whether the agreement, dated 27.3.1963 has

been assigned in favour of the Government as required under Clause 17 of the Act. Further, the petitioner asserted that their father has paid all the dues and also produced the necessary receipts purported to have been issued by the 2nd respondent society. Apart from that, no dues certificate was issued by the society. It is acceptable to the petitioners to pay the loan amount directly as per the agreement if the father of the petitioners fell in arrears and if the society has assigned the agreement in favour of the Government. Then only the Government can interfere and can make a demand as per law and not otherwise. In this case, neither the no dues certificate issued by the 2nd respondent is accepted nor the Government is able to say that in view of the fact that the society was not able to recover the amounts from the members, the agreement is assigned to the Government as required under Section 17 of the agreement. In the absence of specific information, it cannot be said that the action initiated by the Government is legal.

Under those circumstances, the impugned order as confirmed in the CTA is set aside and the matter is remitted to the Primary authority to conduct a fresh enquiry into the matter as per law and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

Writ petition is allowed accordingly. No costs.

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29.06.2006

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